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IN THE

Supreme Court of the United States

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October Term, 1965

No. 1038

ROBERT C. GRASBERGER, Trustee in Bankruptcy,
RICHARD J. HILL, Objecting Creditor,
Petitioners

v.

LOUISE C. CALISSI, Executrix of the ESTATE OF PAUL C. CALISSI, deceased, as a general creditor, and PAUL CALISSI, ROBERT CORSINI, RAYMOND CORSINI and LOUISE C. CALISSI, as priority and general creditors,
Respondents

In the matter of: CALPA PRODUCTS COMPANY, Bankrupt

Petition for Rehearing of Order Denying Petition for Writ of Certiorari

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To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioners, Robert C. Grasberger, Trustee in Bankruptcy, and Richard J. Hill, Objecting Creditor, file the within Petition for Rehearing of Order Denying Petition for Writ of Certiorari, pursuant to Sec. 58(2) of the revised rules of the Supreme Court of the United States, 1954, as amended through June, 1964.

1. Jurisdiction is based upon Rule 58(2) of the Rules of the Supreme Court of the United States, adopted April 12, 1954 as amended through June, 1964, and within the dictates set forth in the cases of *Sanitary Refrigerator Co. v. Winters*, 280 U.S. 30, 34, footnote 1; *Massey v. United States*, 291 U.S. 608; *Schriber-Schroth Co. v. Cleveland Trust Co.*, 305 U.S. 47, 50.

2. The Opinion of the United States Court of Appeals for the Third Circuit from which the Petition for Writ of Certiorari was filed, was decided on December 21, 1965. It is reported in 354 F. 2d 1002. This decision was entered prior to the decision of the United States Supreme Court in Katchen, Petitioner v. Hyman D. Landy, Trustee in Bankruptcy, etc., U.S. , 86 S. Ct. 467, L. Ed. , which was decided on January 17, 1966. This decision appeared in the Advance Reports of February 1, 1966, and was read by counsel for the petitioners on or about February 15, 1966. At that time the Petition for Writ of Certiorari had been printed, and, hurriedly, there was inserted in the printer's proof reference to the case of *Katchen, Petitioner v. Landy, Trustee*, etc. but not fully setting forth the complete similarity of the determinative decision by your Honorable Court of the principles of law set forth there and those controlling the reasons for the grant of the Petition for a Writ of Certiorari as prayed for in the instant case.

3. Petitioners respectfully pray your Honorable Court for a rehearing of the Petition for a Writ of Certiorari, since the Opinion of the Court of Appeals for the Third Circuit, affirming the Opinion of the District Court is in *direct conflict* and is *inconsistent* with the Opinion and principles enunciated by your Honorable Court in the case of *Katchen, Petitioner v. Landy, Trustee*, etc. (supra). The holding of the Court of Appeals in this case represents irreconcilable interpretations of the critical statutory language of the Bankruptcy Act as enunciated by the Supreme Court of the United States. This decision, if it so remains, with-

out allowance of the Petition for Writ of Certiorari, would disturb the scheme and purpose of the bankruptcy laws that there be uniform administration under the Bankruptcy Act and would disturb the scheme and purpose that all creditors receive equality of treatment, which it is the purpose of the Bankruptcy Act to afford.

Katchen, Petitioner v. Landy, Trustee, etc. (supra)

United States v. Speers, Trustee, 379 U.S. 958, 86 S. Ct. 411, 13 L. Ed. 2d 553 (Dec. 1965)

4. If the denial of the Petition for Writ of Certiorari stands, then there is a serious judicial rupture in the line of cases extending from *Pepper v. Litton*, 308 U.S. 295, 60 S. Ct. 238, 84 L.Ed. 281 through to *Katchen, Petitioner v. Landy, Trustee* (supra). The end result in the instant case would permit the distribution of over one-half (½) of the assets of the bankrupt to its sole stockholders, directors and officers, who are fiduciaries in respect to all creditors of the bankrupt. The record is clear and uncontradicted that there is a patent violation of the Congressional directive set forth in Sec. 57, sub. g of the Bankruptcy Laws when a bankruptcy trustee or a creditor presents a Sec. 57, sub. g objection to a claim, the claim can not be allowed when the creditor has received or acquired preferences, void or voidable under this title, in the absence of a surrender of the preference. The allowance of the objected claims would permit distribution to the sole stockholders, officers and directors of the bankrupt corporation at the expense of actual creditors.

The Supreme Court of the United States, in Katchen v. Landy (supra) at p. 473, stated:

> "The objection under Sec. 57, sub. g is, like other objections, part and parcel of the allowance process and is subject to summary adjudication by the bankruptcy court. This is the plain import of Sec. 57 and finds support in the same policy of expedition that underlies the

necessity for summary action in many other proceedings under the Act."

And, again, at p. 475:

> "More specifically, a creditor who offers a proof of claim and demands its allowance is bound by what is judicially determined."

And, further, at p. 476:

> "By presenting their claims respondents subjected themselves to all the consequences that attach to an appearance. . . ."
>
> " 'That requirement is in harmony with the rule generally followed by courts of equity that, having jurisdiction of the parties to controversies brought before them, they will decide all matters in dispute and decree complete relief.' (Alexander v. Hellman) 296 U.S., at 241-242, 56 S. Ct. at 210-211."

In spite of this, the Bankruptcy Court, in finding that preferences had been received by the claimants involved in the two objected claims (being the same parties) yet allowing these claims finding it had no jurisdiction over the parties claimants, does violence to the Congressional mandate expressed in the Bankruptcy Act. That result is not consistent with the equitable purposes of the Bankruptcy Act. This Court stated in *Katchen v. Landy* (supra) at p. 478:

> "We think Congress intended the trustee's Sec. 57, sub. g objection to be summarily determined; and to say that because the trustee could bring an independent suit against the creditor to recover his voidable preference, he is not entitled to have his statutory objection to the claim tried in the bankruptcy court in the normal manner is to dismember a scheme, which Congress has prescribed."

From the point of equitable principles involved in this bankruptcy situation it is more sharply indicative of the inconsistency between the mandate of Congress, as set forth in the Bankruptcy Act, the decisional law of the United States Supreme Court as most recently reiterated, in *Katchen v. Landy* (supra), when the claims which are objected to, on, among other grounds, that preferences have been paid and received by claimants, who occupy fiduciary positions in the corporate bankrupt, not only to the corporation and its stockholders, but also to its creditors, are allowed on an erroneous finding, that the Bankruptcy Court did not have jurisdiction over the parties, who had presented such claims in the same bankruptcy proceedings.

5. The denial of this Petition for a Writ of Certiorari will create a conflict among the decisions of the Courts of Appeals of possibly every circuit of the United States and will be in direct conflict with the decisions of the United States Supreme Court in that it eliminates the rule of law that stockholders, officers and directors of a bankrupt corporation are fiduciaries and that their dealings with the corporation are subject to rigorous scrutiny and such fiduciaries must bear the burden of proving their claims, in bankruptcy proceedings involving their corporation, were arm's length transactions.

Pepper v. Litton, 308 U.S. 295, 60 S. Ct. 238, 84 L.Ed. 281;

Taylor v. Standard Gas and Electric Co., 306 U.S. 307, 59 S. Ct. 543, 83 L.Ed. 669;

In re Kansas City Journal-Post Co., Inc., 144 F.2d 791 (C.A. 8);

Bankers Life & Casualty Corp. v. Kirtley, Trustee, etc., 338 F.2d 1006 (C.A. 8);

Hopper v. American National Bank of Cheyenne, Wyoming, 309 F.2d 244 (C.A. 10);

Braddy, Appellant, v. Randolph, Jr., Trustee in Bankruptcy, etc., 352 F.2d 80 (C.A. 4).

Denial of this Petition for a Writ of Certiorari legally emasculates the fundamental rule of law that a proof of claim may not be founded on hearsay evidence of a witness, who did not testify under oath and was not subject to cross-examination.

Petition of Soyer, 229 F.2d 805, cert. denied, 76 S. Ct. 1025, 351 U.S. 966 100 L.Ed. 1486;

Otney v. United States, 340 F.2d 696 (C.A. 10);

Dereweki v. Pennsylvania Railroad Co., 353 F.2d 436 (C.A. 3, Dec. 1, 1965).

6. The denial of this Petition for a Writ of Certiorari is contrary to the basic concept of piercing the corporate veil where the corporation was in fact nothing more than the alter ego of its stockholders, directors and officers, the claimants in the two disputed claims.

Soviero, Trustee v. The Franklin National Bank of Long Island, 328 F.2d 446 (C.A. 2).

7. The denial of this Petition for a Writ of Certiorari is a condonation of a clear and flagrant violation of the Bankruptcy Act where the Referee in Bankruptcy has ruled that the moneys purportedly loaned by these fiduciary claimants to the bankrupt were capital investments and still allowed such claim. Further, it will amount to a condonation of swearing falsely by the same fiduciary to her Final Account as Executrix in a court having jurisdiction of a decedent's estate or falsely swearing in the same capacity to a substantial claim in the Bankruptcy Court.

Wherefore, your petitioners respectfully pray the court for a rehearing of the Order denying the issuance of

a Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

And they will ever pray &c.

Respectfully submitted,

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515 Lewis Tower Building
225 S. 15th Street
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COMMONWEALTH OF PENNSYLVANIA:
COUNTY OF PHILADELPHIA : *ss*

I, Peter P. Zion, counsel of and for the petitioners named in the foregoing Petition, do hereby certify that this Petition for Rehearing, filed pursuant to Rule 58(2) of the Rules of the Supreme Court of the United States, as amended through June, 1964, is presented in good faith and not for delay and it is further certified that the Petition is restricted to the grounds as set forth in the Petition, which are confined to intervening circumstances of substantial or controlling effect and to other substantial grounds available to petitioner although not previously presented and stated in full.

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